

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriella Carpenter	Team: Squad #13	CCRB Case #: 201609709	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/09/2016 6:15 PM	Location of Incident: East 218th Street and Bronxwood Avenue	Precinct: 47	18 Mo. SOL 5/9/2018	EO SOL 5/9/2018	
Date/Time CV Reported Tue, 11/22/2016 4:11 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 11/22/2016 4:11 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POF Katherine Sepulveda	02055	959220	047 PCT
2. SGT Aleksandr Kovalenko	01184	944709	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Aleksandr Kovalenko	Abuse: Sgt. Aleksandr Kovalenko threatened § 87(2)(b) with the use of force.	[REDACTED]
B.POF Katherine Sepulveda	Abuse: PO Katherine Sepulveda searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]

Case Summary

§ 87(2)(b) filed a complaint with the CCRB over the phone on November 22, 2016. On November 9, 2016, at approximately 6:15 p.m., Police Officer Katherine Sepulveda and Sergeant Aleksandr Kovalenko of the 47th Precinct pulled § 87(2)(b) over at East 218th Street and Bronxwood Avenue in the Bronx for a defective driver's side headlight. While he was looking for his registration, § 87(2)(b) argued with the officers about whether he had to put the passenger window down in addition to the driver's side window. Sgt. Kovalenko walked from the passenger side to the driver's side, opened the driver's side door, and ordered § 87(2)(b) to step out of the car. When he failed to comply, Sgt. Kovalenko took out his Taser and told § 87(2)(b) that he would tase him (**allegation A**). § 87(2)(b) stepped out of the car and then PO Sepulveda entered the car, first through the driver's door, then the front passenger door, then the rear passenger door (**allegation B**). After about ten to fifteen minutes, PO Sepulveda exited the car and told § 87(2)(b) he could get back in the car. § 87(2)(b) called his mother, § 87(2)(b) and asked her to come; she arrived about fifteen minutes later and spoke with the officers about what happened, then the officers gave § 87(2)(b) the summons and left.

§ 87(2)(g)
§ 87(2)(b) recorded a video of the incident on his cell phone while he was inside the car. The video is sequential but § 87(2)(b) could only send it in three parts. It primarily captures audio and only captures a portion of the incident when § 87(2)(b) was inside the car. Sgt. Kovalenko can be heard threatening to use his Taser on § 87(2)(b).



201609709 Part 1.mp4



201609709 Part 2.mp4



201609709 Part 3.mp4

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation on November 28, 2016.
- As of January 4, 2017, no notice of claim has been filed in regards to this case (Board Review 1).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b)
- PO Sepulveda has been a member of the service for one year and has not had any other CCRB complaints against her.
- Sgt. Kovalenko has been a member of the service for nine years and has had seven other CCRB allegations pled against him in three cases.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g)

Allegation A: Abuse of Authority: Sgt. Aleksandr Kovalenko threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

§ 87(2)(b) testified that after he was pulled over, PO Sepulveda approached the driver's side window and Sgt. Kovalenko approached the passenger window (Board Review 2). While he was looking for his registration, PO Sepulveda told him that he needed to put the passenger window down so that Sgt. Kovalenko could hear him, and § 87(2)(b) asked why he needed to when he was already speaking with her. She told him to put the window down again, so he cracked it open. She then told him to put it all the way down, so he opened it a little more. Sgt. Kovalenko became agitated and told him to put the window all the way down, then walked around the car to the driver's side. Once on the driver's side, Sgt. Kovalenko told § 87(2)(b) to put the window down even though the driver's side window was all the way down, then Sgt. Kovalenko opened the driver's door and told § 87(2)(b) to get out of the car at the same time PO Sepulveda asked again for his registration. § 87(2)(b) asked several times why he had to get out, and Sgt. Kovalenko told him that he did not have to explain, then took out his Taser. § 87(2)(b) did not get out of the car because he thought that he did not have to get out without probable cause and Sgt. Kovalenko would not explain why he needed to step out. After Sgt. Kovalenko asked § 87(2)(b) to get out several more times, he told § 87(2)(b) that he would tase him because he was being noncompliant. § 87(2)(b) stepped out of the car and walked to the back of his car with Sgt. Kovalenko. While they were standing there, § 87(2)(b) spit on the ground, and Sgt. Kovalenko told him he would write a summons for spitting. § 87(2)(b) said that he was going to sue, and he thought that Sgt. Kovalenko threatened to tase him again.

§ 87(2)(b) § 87(2)(b)'s mother, arrived about fifteen minutes after § 87(2)(b) had been permitted to get back in his car (Board Review 3). She approached the police car to speak with the officers, and asked why § 87(2)(b) had been stopped. PO Sepulveda told her that he was stopped for a defective headlight. § 87(2)(b) asked how it had escalated to them searching his car, and PO Sepulveda told her that they had asked him to roll down the passenger window and he did not comply and he threatened to "fuck up" Sgt. Kovalenko. § 87(2)(b) asked § 87(2)(b) to come over then asked him whether he had threatened to "fuck up" Sgt. Kovalenko. § 87(2)(b) denied making the threat.

Sgt. Kovalenko testified that after § 87(2)(b) was stopped, Sgt. Kovalenko approached the passenger side and PO Sepulveda approached the driver's side (Board Review 4). PO Sepulveda asked § 87(2)(b) three or four times to put down the passenger side window and to give her his paperwork, but § 87(2)(b) did not open the passenger side window so Sgt. Kovalenko could not hear his side of the conversation. After standing on the passenger side for a couple of minutes without § 87(2)(b) putting the passenger window down, Sgt. Kovalenko walked to the driver's side. When he got to the driver's side, he could hear that § 87(2)(b) was yelling unrecalled profanities and that the officers had no right to stop him, and refused to give his paperwork. The driver's side window was not completely open – Sgt. Kovalenko could not

recall how far open it was – so Sgt. Kovalenko asked § 87(2)(b) to give them his paperwork and to put the driver’s side window down but § 87(2)(b) did not comply with either direction. § 87(2)(b) then said that he would “fuck up” the officers, so Sgt. Kovalenko ordered him to step out of the car. § 87(2)(b) did not get out of the car. Sgt. Kovalenko told him at least three times that if he continued to act in an aggressive manner and fail to comply with orders then he would use his Taser. § 87(2)(b) still did not step out or hand over his paperwork, so Sgt. Kovalenko opened the driver’s door, took out his Taser, and pointed it in front of § 87(2)(b) so that he could see the Taser’s laser. Sgt. Kovalenko then asked about three more times for § 87(2)(b) to step out of the car before he complied.

PO Sepulveda testified that she approached the driver’s side window and Sgt. Kovalenko approached the passenger side window (Board Review 5). She asked § 87(2)(b) for his license and paperwork but he refused to give it to her and rolled his eyes. She asked again many times, and he verbally refused two more times. § 87(2)(b) became more and more angry, and asked why he was stopped and why he had to give his paperwork. PO Sepulveda then asked him multiple times to put the passenger window down so that Sgt. Kovalenko could hear him, but he refused multiple times, saying that he did not need to put the passenger window down. Sgt. Kovalenko then walked to the driver’s side, opened the driver’s door, and ordered § 87(2)(b) to get out of the car because he would not give them his paperwork. § 87(2)(b) refused to get out several times, then finally stepped out and said, “I’ll fuck you up,” and yelled and cursed at the officers. § 87(2)(b) walked within a foot of the officers, and PO Sepulveda thought that he was trying to fight them because his hands were in fists and his arms were up. Sgt. Kovalenko took out his Taser but did not point it at § 87(2)(b) and threatened to use the Taser if § 87(2)(b) did not comply with their directions. During her interview, PO Sepulveda was shown a portion of the video § 87(2)(b) took during the incident wherein Sgt. Kovalenko can be heard saying that he would tase § 87(2)(b) while § 87(2)(b) was seated in the car; she stated that the video did not refresh her memory and she did not recall Sgt. Kovalenko threatening to tase § 87(2)(b) before he stepped out of the car, though she agreed that she heard Sgt. Kovalenko threaten to tase § 87(2)(b) in the video.

Sgt. Kovalenko wrote in his memo book that § 87(2)(b) “refused to lower windows, refused to provide paperwork,” yelled profanities and threats of violence, and was removed from the vehicle and warned of the use of force (Board Review 6).

In the video § 87(2)(b) recorded on his cell phone while inside the car, Sgt. Kovalenko can be heard telling § 87(2)(b) multiple times to step out of the car (Board Review 7). § 87(2)(b) asks why he has to get out of the car, and Sgt. Kovalenko responds that he does not need to explain anything to § 87(2)(b) then says, “You’re gonna get tased right now.” § 87(2)(b) says, “Tased?” Sgt. Kovalenko responds, “Yes, you’re failing to comply with the directions.” The officers give § 87(2)(b) multiple directions simultaneously such as to put the window down, give the officers the paperwork, and step out of the car, § 87(2)(g) § 87(2)(b) does not say that he will “fuck up” the officers or threaten them in the video, which includes approximately 1:05 of the interaction before Sgt. Kovalenko says that he will use his Taser.

§ 87(2)(g)

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide Procedure 221-01 (Board Review 8). Conducted electrical weapons should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. Patrol Guide Procedure 221-08 (Board Review 9). Active resisting includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. Active aggression is defined as a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

§ 87(2)(g)

Allegation B: Abuse of Authority: PO Katherine Sepulveda searched the vehicle in which
§ 87(2)(b) **was an occupant.**

§ 87(2)(g)

§ 87(2)(b) testified that, after he walked to the back of his car with Sgt. Kovalenko, he saw PO Sepulveda lean the top half of her body through the driver's door, then through the front passenger door, then the rear passenger door. Each time he turned to see what PO Sepulveda was doing, Sgt. Kovalenko told him to turn around and face the police car. § 87(2)(b) could not see what PO Sepulveda touched, looked at, or moved in his car. About ten or fifteen minutes after exiting his vehicle, § 87(2)(b) heard the click of the trunk and thought that PO Sepulveda had opened it from inside the car. He closed the trunk and then Sgt. Kovalenko told him he could get back in the car.

PO Sepulveda testified that after § 87(2)(b) stepped out of the car, the officers asked him to stand behind his car and he complied. Without speaking to § 87(2)(b) she then entered the driver's side door with the top half of her body to get § 87(2)(b)'s registration from the passenger seat of the car; PO Sepulveda could not recall whether she saw the paperwork on the passenger seat before she entered the car, or whether she looked at or opened anything else while inside the

car. She got out of the car immediately after getting the paperwork, but she could not recall whether she opened any other doors of the car or the trunk.

Sgt. Kovalenko testified that after § 87(2)(b) stepped out of the car, he ordered § 87(2)(b) to stand behind his car, and he complied. PO Sepulveda then entered the car, presumably to retrieve § 87(2)(b)'s paperwork. Sgt. Kovalenko did not instruct her to enter the car to get the paperwork and he did not think they had any conversation about it before she went into the car. While PO Sepulveda was in the car, Sgt. Kovalenko asked § 87(2)(b) to face him instead of towards his vehicle so that Sgt. Kovalenko could see where he was looking and maintain control of the situation. Sgt. Kovalenko could not recall how much of PO Sepulveda's body was in the car or for how long, but he thought that she entered through the driver's door and was inside the car only briefly. Sgt. Kovalenko did not think that § 87(2)(b) had had any of the relevant paperwork out before he exited the vehicle. After PO Sepulveda retrieved the registration, she got out of the car and Sgt. Kovalenko did not think she opened any other doors of the car.

PO Sepulveda wrote in her memo book that § 87(2)(b) became "irate" after he was stopped and refused to give the officers the paperwork for his vehicle (Board Review 10).

Sgt. Kovalenko's memo book states that § 87(2)(b) refused to provide the paperwork for his vehicle.

In the video § 87(2)(b) recorded on his cell phone while inside his car, PO Sepulveda can be heard asking § 87(2)(b) for his registration. The video shows that § 87(2)(b) is holding papers, and he responds that he is looking for the correct registration. PO Sepulveda says that he has the registration in his hands, and § 87(2)(b) tells her that he is looking for the date on the paperwork. Sgt. Kovalenko then orders § 87(2)(b) to step out of the car multiple times and § 87(2)(b) responds that he is still looking for his registration.

Officers are permitted to conduct a warrantless search of a vehicle incident to arrest if and only if they have probable cause to search the vehicle and there is "a nexus between the arrest [of an individual] and the probable cause to search." People v. Galak, 81 N.Y.2d 463, 467 (1993) (Board Review 11). Without an arrest, officers may search a car if a civilian consents to the search provided the consent was a "true act of the will, an unequivocal product of an essentially free and unconstrained choice." People v. Gonzalez, 39 N.Y.2d 122, 124 (1976) (Board Review 12). If a defendant has been given "an adequate opportunity to produce the registration and proof of insurance" and fails to do so, and furthermore must be removed from the vehicle because he or she poses a safety concern for the officers, the officers are "authorized to conduct a narrowly circumscribed search for the vehicle's paperwork in the area specified by defendant." People v. Pryor, 26 Misc. 3d 997, 1003 (2009) (Board Review 13).

§ 87(2)(g)

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date